

Remarks

Claims 1-5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kotter (“Leading Change: Why Transformation Efforts Fail”, Harvard Business Review, Reprint 95205, March-April 1995, pp. 59-67; hereinafter Kotter) in view of Attenello (“Re-Engineering to Achieve Breakthrough Results”, TMA Journal, Atlanta: Mar/Apr 1995, Vol. 15, Issue 2, page 6; hereinafter Attenello), claims 6-7 & 9-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ryan (“Avoid Hit-or-Miss Hiring”, HR Magazine, Alexandria, Nov. 1998; hereinafter Ryan) in view of Kotter, claim 8 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ryan in view of Kotter and Attenello, claims 11 & 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ryan in view of Kotter, and further in view of Herman (“Stability is Watchword for Effective Workforce”, HR Focus, New York, June 1999; hereinafter Herman), claims 13 & 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ryan in view of Kotter, in view of Herman, and further in view of Laurie (“Gift of Knowledge”, Franchising World, Washington: Sep/Oct 1999, Vol. 31, Issue 5, page 35; hereinafter Laurie), and claims 15-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kotter in view of Attenello, and further in view of Robbins (“Organizational Behavior”, Printice Hall, Upper Saddle River, NJ, 1998, pp. 595-616; hereinafter Robbins). Each of these rejections is respectfully traversed, and reconsideration thereof is requested for the reasons set forth below.

Initially, Applicants address below the Response to Arguments portion of the final Office Action beginning at page 11 thereof. Various aspects of Applicants’ independent claims are believed to patentably distinguish Applicants’ protocol from the teachings and suggestions of the applied art. For example, the independent claims recite:

- *ascertaining through research with customers of the organization desired characteristics for the organization from a customer perspective*

In the Response to Arguments section of the final Office Action, it is stated: “In the discussion of the ‘Eight Steps to Transforming Your Organization’, Kotter discloses first creating a sense of urgency.” Applicants agree with this characterization of the teachings of Kotter. Specifically, at page 60, paragraph 8, Kotter states:

In a few of the most successful cases, a group has manufactured a crisis. One CEO deliberately engineered the largest accounting loss in the company's history, creating huge pressures from Wall Street in the process. One division president commissioned first-ever customer-satisfaction surveys, knowing full well that the results would be terrible. He then made these findings public. On the surface, such moves can look unduly risky. But there is also risk in playing it too safe: when the urgency rate is not pumped up enough, the transformation process cannot succeed and the long-term future of the organization is put into jeopardy.

As taught by Kotter, the customer-satisfaction surveys were commissioned after the CEO deliberately engineered the largest accounting loss in the company's history. In Kotter, improvement of the organization is thus initiated by a leader who sees the need for a major change (see page 60, paragraphs 5 & 7 of Kotter). The customer-satisfaction surveys in Kotter do not begin the process for change, but rather, document customer dissatisfaction after the CEO has deliberately engineered the largest accounting loss in company history. The customer-satisfaction surveys serve in Kotter to coalesce the sense of urgency. Again, these customer-satisfaction surveys are taken *after* the CEO deliberately engineered the large accounting loss. In contrast, no such prerequisite is recited in Applicants' protocol.

The final Office Action next states "This sense of urgency may come from customer-satisfaction surveys and customers, *even to the extent that customer may be included in the coalition formed to create a vision and implement change.*" Applicants respectfully submit that a careful reading of Kotter fails to uncover any support for this later characterization of the teachings thereof. The final Office Action provides no support for this characterization. Further, page 64, paragraph 3 of Kotter describes a 60-year-old plant manager who is part of the guiding coalition and the vision-creation team. This 60-year-old plant manager is part of the company, not a customer of the company.

As noted above, Applicants' independent claims recite ascertaining *desired characteristics for the organization from a customer perspective*. The customer-satisfaction surveys in Kotter do not provide such a result. Rather, the customer-satisfaction surveys in Kotter merely document the well-known terrible results of the organization. The final Office Action alleges that "this involvement of customers in the earliest steps of the process redesign that leads to the creation of a vision and strategies *obviously comprises ascertaining desired characteristics from a customer perspective.*" (Emphasis added.) Applicants respectfully traverse this conclusion.

There is no teaching or suggestion in Kotter that the customer-satisfaction surveys are used in any way other than to create a sense of urgency. Further, there is no inherency in Kotter that the customer-satisfaction surveys necessarily produce desired characteristics for the organization from a customer perspective. Rather, the customer-satisfaction surveys are expressly taught in Kotter to create a sense of urgency, and document the customer's dissatisfaction with the company. For example, one customer-satisfaction survey might simply ask "Are you happy with Company XYZ's service?" Obviously, the answer to this inquiry does not result in ascertaining a desired characteristic for the organization from a customer perspective. Thus, it is not inherent in Kotter to say that the customer-satisfaction surveys discussed therein to create a sense of urgency necessarily result in ascertaining desired characteristics for an organization from a customer perspective.

The final Office Action further states "Kotter discloses a plant manager needing to change behavior in a customer-oriented way." (page 64, paragraph 3). "Obviously, customer survey data would be a likely source of desired characteristic data that would lead to a plant manager's change in behavior and style such that he thinks about customers." Applicants respectfully submit that there is no support in Kotter for this conclusion. Page 64, paragraph 3 states:

Perhaps even more important, most of the executives I have known in successful cases of major change learn to "walk the talk". They consciously attempt to become a living symbol of the new corporate culture. This is often not easy. A 60-year-old plant manager who has spent precious little time over 40 years thinking about customers will not suddenly behave in a customer-oriented way. But I have witnessed just such a person change, and change a great deal. In that case, a high level of urgency helped. The fact that the man was a part of the guiding coalition and the vision-creation team also helped. So did all the communication, which kept reminding him of the desired behavior, and all the feedback from his peers and subordinates, which helped him see when he was not engaging in that behavior.

The phrase "behave in a customer-oriented way" in the above-noted paragraph could imply a wide spectrum of behaviors, none of which necessarily result from research with customers to achieve desired characteristics for an organization from the customer perspective. The paragraph describes the plant manager as spending precious little time over 40 years thinking about customers, and needing to change to behave in a customer-oriented way. Thinking about a customer in a customer-oriented way is distinct from ascertaining through research with customers of the organization *desired characteristics of the organization from a*

customer perspective. For example, a company can think about a customer, and thus behave in a customer-oriented way, without ever actually conducting research with the customers of the organization to achieve desired characteristics for the organization from the customer's perspective.

Applicants next recite:

- *employing leadership of the organization to define cultural characteristics for the organization using, at least in part, the desired characteristics ascertained through research with the customers of the organization.*

In Applicants' recited protocol, the ascertaining through research with customers of the organization, desired characteristics for the organization necessarily occurs before leadership of the organization defines cultural characteristics for the organization since the leadership defines the cultural characteristics using, at least in part, the desired characteristics ascertained through research with the customers of the organization. As noted above, the customer-satisfaction surveys in Kotter are designed to create a sense of urgency within the organization. Thus, in Kotter, the assumption is that the customer-satisfaction surveys will be negative, in order to result in the sense of urgency. This is clearly a different survey for a different purpose than that recited by Applicants in the independent claims at issue.

Further, Applicants respectfully submit that Kotter does not teach or suggest ascertaining *cultural characteristics, per se*. As used in the present application, cultural characteristics mean a set of shared beliefs that people have about what they are doing and why. Cultural characteristics are distinct from standard operating procedures. Cultural characteristics add a latitude for improvisation, and unique action. They are the underlying foundation that directs decisions when everything else is changing within an organization.

The visions and strategies discussed by Kotter at pages 61 and 63 do not equate to *cultural characteristics*, as the phrase is employed in the present application and understood in the art. A cultural characteristic is more a purposeful or goal-driven behavior that appears dictated by a sense of who we are and what we want to become. A cultural characteristic is distinct from a vision or strategy which may represent requirements of an employee to, for example, improve productivity. As a further example, a vision or strategy might be to have an employee achieve X number of sales in a given time period. This is contrasted with a cultural

characteristic, which relates more the set of beliefs held by the employees as to what they are doing and why. A careful reading of the applied art fails to uncover any discussion of cultural characteristics, let alone their use in effectuating improvement of an organization, as recited in Applicants' independent claims.

Specifically, Applicants' recited protocol includes, *employing leadership of the organization to define cultural characteristics for the organization using, at least in part, the desired characteristics ascertained through research with the customers of the organization*. There is no discussion in Kotter that the leadership of the organization defines cultural characteristics for the organization, let alone defines those characteristics using at least in part the desired characteristics ascertained through research with the customers of the organization. In this regard, the final Office Action references page 67, paragraphs 2-3 of Kotter. However, page 67, paragraphs 2 & 3 of Kotter are describing the eighth step of the Kotter approach; that is institutionalizing the approach. This eighth step appears at the end of the protocol of Kotter. In contrast, Applicants recite employing leadership of the organization to define the cultural characteristics for the organization near the beginning of the claimed protocol. Subsequent processing then employs these cultural characteristics. Thus, Applicants recite a different protocol than that described by Kotter.

Additionally, the final Office Action alleges at page 12 that a vision comprises culture (and presumably, a cultural characteristic, as recited by Applicants). This conclusion is respectfully traversed. A vision does not necessarily include a cultural characteristic. For example, a vision might be to have \$1,000,000 in the bank at the end of the fiscal year. This does not necessarily include the cultural characteristics of the organization. As recited in Applicants' independent claims, the leadership of the organization defines the cultural characteristics in behavioral terms. No similar teaching is provided by Kotter. Simply having a vision does not imply the culture to be employed in achieving that vision. For example, consider the recent collapse of Enron.

Further, the final Office Action alleges that Kotter teaches the concept of corporate culture in which *behaviors are rooted in social norms and shared values*, wherein the role of the behavior is instrumental in institutionalizing the changes required in the corporate culture. Without acquiescing to this characterization of Kotter, Applicants respectfully submit that

behaviors rooted in social norms and shared values are distinct from the cultural characteristics of Applicants' recited invention, which are derived, at least in part, from the desired characteristics ascertained through research with the customers of the organization. Clearly, behaviors rooted in social norms and shared values do not necessarily originate with desired characteristics ascertained through research with customers of the organization.

More generally, Applicants' independent claims recite a particular protocol for effecting improvement of an organization. The steps outlined in each of the independent claims at issue interrelate and set forth the protocol. Although the final Office Action appears to address various characteristics of Applicants' recited protocol, it does not address the complete protocol of the steps outlined in Applicants' independent claims. For example, Applicants' protocol specifies defining by leadership of the organization the cultural characteristics in behavioral terms. This defining of cultural characteristics for the organization in behavioral terms occurs *before* there is an identification of defined cultural characteristics which are not present in the organization or present characteristics which are inconsistent with the defined cultural characteristics, and before generating of an action plan for changing the organization. The only behavior discussed in Kotter occurs after the fact. At page 61, paragraph 8, and page 67, paragraph 3, wherein new behaviors are evaluated to ascertain whether performance improvement has been achieved. For at least this reason, Applicants respectfully submit that the protocol recited in the claims presented patentably distinguishes over the applied art.

With respect to independent claim 1, the Office Action acknowledges that Kotter does not disclose validating the "characteristics and action plan" with a focus group. Applicants agree with this statement in general, but point out that Applicants' protocol describes validating the *cultural* characteristics *expressed in behavioral terms*, as well as the at least one action plan. In this regard, Applicants respectfully submit that the Office Action fails to address Applicants' recited protocol. The characteristics at issue in Applicants' protocol are the *cultural* characteristics for the organization, which are characteristics that are not addressed in Kotter. Attenello does not teach or suggest the above-noted deficiencies of Kotter when applied against the independent claims presented. Attenello discloses a re-engineering approach for re-engineering work and processes (page 1, paragraphs 2, 5 of Attenello). This is distinct from Applicants' recited protocol, which addresses cultural characteristics expressed in behavioral terms. A careful reading of Attenello fails to uncover any teaching or suggestion of validation of

cultural characteristics expressed in behavioral terms *per se*. For at least this reason, Applicants respectfully submit that the claims presented patentably distinguish over the applied art.

With respect to independent claim 6, and the rejection thereof under 35 U.S.C. §103(a) as being unpatentable over Ryan in view of Kotter, Applicants respectfully submit that Ryan does not teach or suggest the above-noted deficiencies of Kotter when applied against the claim at issue. Applicants' claim 6 recites obtaining *cultural characteristics for an organization expressed in behavioral terms*. Further, Applicants' protocol recites that the cultural characteristics for the organization are obtained employing *desired characteristics for the organization from a customer perspective ascertained through research with customers of the organization*. A careful reading of Ryan and Kotter fail to uncover any teaching or suggestion of this aspect of Applicants' process. Ryan addresses evaluation of a candidate's skills and/or education (see page 3, paragraph 13 of Ryan), but not *behaviors*. A careful reading of Ryan fails to uncover any discussion of asking a candidate to demonstrate their cultural characteristics or values described in behavioral terms. This is a significant difference between Applicants' recited protocol and the teachings of Ryan and Kotter.

More particularly, a careful reading of Ryan fails to uncover any discussion of generating cultural characteristics for the organization by employing desired characteristics for the organization from a customer perspective ascertained through research with customers of the organization. During a hiring interview, Applicants' protocol recited in claim 6 recites that the applicant is requested to relate past behavior to the cultural characteristics of the organization. If there is a sufficient degree of match, then the applicant is hired. Again, in Applicants' protocol, it is the *cultural characteristics* for the organization expressed in behavioral terms that are being uniquely employed in the hiring process. Further, these cultural characteristics for the organization expressed in behavioral terms are ascertained by employing desired characteristics from the organization *from a customer perspective ascertained through research with customers of the organization*. No such teaching or suggestion is provided by Ryan and Kotter, either alone or in combination.

For at least the above-noted reasons, Applicants respectfully submit that the independent claims presented patentably distinguish over the teachings of Kotter, Attenello, Ryan and Robbins (cited with respect to claim 15), either alone or in combination. Applicants' independent claims patentably distinguish over these references by reciting a protocol that includes ascertaining through research with customers of the organization *desired characteristics of the organization from a customer perspective*, and then defining *cultural characteristics for the organization* using, at least in part, the desired characteristics ascertained through research with the customers of the organization. In Applicants' protocol, the process is customer-driven and examines the organization by looking from the outside of the organization, rather than looking internally from the organization.

The dependent claims are believed allowable for the same reasons as the independent claims, as well as for their own additional characterization. In this regard, Applicants respectfully submit that a careful reading of Herman and Laurie fails to uncover any of the above-noted deficiencies of Kotter, Attenello, Ryan and Robbins, when applied against the claims presented.

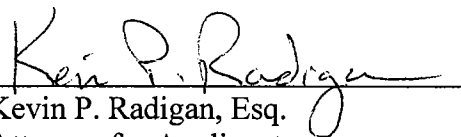
With respect to claims 11 & 12, Applicants respectfully submit that Herman does not teach or suggestion hiring applicants having behaviors that match the *cultural characteristics* of the organization, let alone cultural characteristics as defined in independent claim 6. In Applicants' protocol, how results are obtained is more important than simply discussing the results obtained.

With respect to claims 13 & 14, and the citation of Laurie, Applicants respectfully submit that Laurie is not relevant to Applicants' recited protocol. The training discussed in Laurie is technical for a general knowledge training available to any company. Training employees on cultural characteristics of an organization (such as recited by Applicants) and the resulting behavioral manifestations in everyday work would be considered intellectual capital of the organization, and clearly would be held confidential in-house. Outsourcing this information to a training company such as described by Laurie would be unlikely.

For at least the above-noted reasons, Applicants respectfully submit that the claims presented patentably distinguish over the applied art and are in condition for allowance, and such action is respectfully requested.

Should any issue remain unresolved, however, Applicants' undersigned representative requests a telephone interview with the Examiner to further discuss the matter in the hope of advancing prosecution of the subject application.

Respectfully submitted,


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